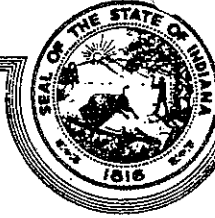


ENVIRONMENTAL MANAGEMENT BOARD



INDIANAPOLIS 46206-1964

1330 West Michigan Street
P. O. Box 1964

STATE OF INDIANA)		BEFORE THE INDIANA ENVIRONMENTAL
)	SS:	
COUNTY OF MARION)		MANAGEMENT BOARD
GARY DEVELOPMENT COMPANY, INC.)		
)	Petitioner	
vs.)		CAUSE NO. N-146
INDIANA ENVIRONMENTAL MANAGEMENT)		
BOARD)		
)	Respondent	

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER.

Findings of Fact

1. The Environmental Management Board of the State of Indiana (Board) is an agency of the State of Indiana, duly empowered to hold administrative hearings, and to enter an order directing the taking of such action as may be required under the circumstances.
2. The Board has jurisdiction over the subject matter and parties to this action.
3. In early 1973, Petitioner began to explore developing a sanitary landfill in a mined-out, water-filled sand pit in Gary, Indiana (hereafter called the "site"). On May 15, 1973, The Indiana Stream Pollution Control Board (SPCB) approved Petitioner's proposal to dewater the sand pit. On June 19, 1973, SPCB granted Petitioner Construction Permit SW 133, thereby allowing preparatory construction work for a sanitary landfill to begin.
4. On August 29, 1974, the State conducted its final inspection of the site which led to SPCB's granting final approval to Petitioner to commence sanitary landfill operations. The landfill began accepting solid waste for disposal in September 1974. On February 20, 1975, SPCB sent Petitioner its Operating Permit No. 45-2.

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5. On May 20, 1980, SPCB approved an Agreed Order negotiated between Petitioner and SPCB staff. This Order required that Petitioner submit, within one hundred eighty (180) days of May 20, 1980, an application for a modification of its original construction permit. This application was timely submitted to SPCB on November 14, 1980.
6. On February 16, 1982, the Indiana Environmental Management Board ("EMB") (in the interim, EMB replaced SPCB as the Indiana agency responsible for landfill permits) notified Petitioner by two nearly identical letters (hereafter called the "February 16, 1982, letter"), indicating that its Operating Permit No. 45-2 had been renewed and that its revised construction plans submitted November 14, 1980, had been approved, both subject to nine (9) conditions. Petitioner thereafter filed a petition for hearing contesting the imposition of these nine conditions.
7. On February 18, 1983, the Board approved a Settlement Agreement and Order in Cause No. N-53, settling the appeal filed by Gary Development contesting the imposition of nine (9) conditions imposed by the Board on February 16, 1982, in the renewal of its Operating Permit No. 45-2.
8. On January 3, 1984, the Board revoked four (4) special permission letters from the disposal of "special waste" at Petitioner's landfill previously issued by the Board.
9. On January 23, 1984, Petitioner appealed the revocation of the special permission letters.
10. Notice of Hearing was issued on the tenth day of April, 1984. Notice of time and place of hearing was given as provided by law, by mailing, via certified mail, notice of hearing to all parties herein.
11. A formal administrative hearing, pursuant to IC 13-7 and IC 4-22-1 was held on August 29, 1984, and September 10 and 11, 1984. Appearing for the Petitioner was Mr. Warren D. Krebs, Attorney at Law. Appearing for the Respondent was Mr. Matthew S. Scherschel, Deputy Attorney General.
12. The February 18, 1983, Settlement Agreement reads in pertinent part as follows:

"It is expressly agreed and understood that the provisions of this Recommended Agreed Order constitute a modification of Petitioner's modified Construction Permit SW 113 and Operating

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Permit No. 45-2. To the extent that this Recommended Agreed Order is inconsistent with these two permits, the drawings and narrative submitted on November 14, 1980, or the State's February 16, 1982, letter, the provisions below shall supercede such inconsistent provisions, and shall govern construction and operations at the site from the date this Recommended Agreed Order is approved by EMB. (This date is hereafter called "the effective date of this Order.")

- "1. Condition No. 1 in the February 16, 1982, letter to wit: Sandy, granular material under the Unified Soil Classification SW and SP will not be used for daily cover at the site, remains unchanged.
- "2. Condition No. 4 in the February 16, 1982, letter is deleted and replaced by the following:

"Petitioner shall notify a staff member of the Indiana Division of Land Pollution Control (hereafter called "staff") by phone at least seven (7) days in advance of the installation of any required leachate collection system on-site, to allow staff to inspect such installation.

 - "a. After such notification, Petitioner may install the system on the appointed day at the appointed hour, or as soon thereafter as weather permits, whether or not staff is present.
 - "b. If staff is not present for such installation, Petitioner shall document with photographs and narrative that the installation complies with Petitioner's amended construction permit.
 - "c. Any required leachate collection system shall be installed in compliance with the amended construction permit.
- "4. Condition No. 6 in the February 16, 1982, letter is deleted and replaced by the following:

"It is not necessary that Petitioner install the seepage collection pond detailed on page seven of Petitioner's Engineering Plan. Petitioner agrees that no solid waste will be deposited in "standing water"; the phrase "standing water" shall not be construed to mean de minimus amounts of water or small rain-filled puddles.

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"7. The modified construction plans approved February 16, 1982, called for compaction of the clay perimeter wall around the site and testing the clay used for constructing this wall in accordance with the 90 percent Standard Proctor Density Test. Petitioner has found it technically and economically impractical to utilize this test. Respondent has agreed to substitute for this test any test acceptable to staff which will accurately portray the permeability of the clay perimeter wall. Accordingly, Conditions 2 and 3 of the February 16, 1982, letter are deleted and replaced with the following:

- "a. Within forty-five (45) days of the effective date of this Order, or if weather conditions prevent taking the borings within this time period, as soon thereafter as weather permits, Petitioner will have four soil borings (which may be drilled at an angle) taken from the site's west wall, at samples taken at five foot depth intervals in each boring. Blowcounts will be recorded for each split spoon sample taken. The soil boring team will visually inspect the split spoon samples taken from each hole drilled and keep a log of their observations to include any identifiable irregularities or voids encountered during drilling. A total of five Shelby tube samples shall be taken from the borings. The Shelby tube samples will be subjected to a hydraulic conductivity test to ascertain the samples' permeability. Test results will be forwarded to staff within fifteen (15) days of their receipt by Petitioner. Staff shall be notified at least seven (7) days in advance of any such boring, and will be given an opportunity to attend and view the drilling. Staff shall not interfere with such operations.
- "b. If the test results show the permeability of the clay wall to be 5.0×10^{-6} centimeters per second or less (i.e., 4.9×10^{-6} , 4.0×10^{-6} , 3.0×10^{-6} , 2.0×10^{-6} , 1.0×10^{-6} , 1.0×10^{-7} , 1.0×10^{-8} , etc.), then no remedial action for the west clay perimeter wall will be required unless staff identifies a significant infiltration of liquid as discussed in subparagraph 7c.
- "c. If the test results show that the permeability of the west perimeter wall is 5.1×10^{-6} centimeters per second or greater (i.e., 5.1×10^{-6} , 6.0×10^{-6} , 7.0×10^{-6} , 8.0×10^{-6} , 9.0×10^{-6} , 1.0×10^{-5} , 1.0×10^{-4} , etc.), or if staff identifies a significant infiltration problem involving a concentrated infiltration

problem involving a concentrated flow of liquid into the site through the west wall or emanating from an area of deposited solid waste along that wall, then it is agreed that further negotiations between the parties will be required to determine what remedial action, if any, must be undertaken along the west wall. If the parties are unable to reach an agreement as to such remedial measures, if any, within sixty (60) days of (i) the submission of the test results to the State, or (ii) the date a significant infiltration of liquid, staff notifies Petitioner in writing of a finding of the issue of what remedial action may be required shall be submitted to the Hearing Officer for hearing and decision.

- "d. Until the soil boring tests are completed with satisfactory results in accordance with subparagraphs "a" and "b" above, or until an agreement is approved, or order entered pursuant to subparagraph "c" above, Petitioner agrees not to construct any further portions of the clay perimeter wall around the site.
- "i. If said test results are satisfactory in accordance with subparagraph 7b, and no significant infiltration of liquid is identified in accordance with subparagraph 7c, then construction of the remaining portions of the clay perimeter wall shall proceed in the same manner as the construction of the west wall so as to ensure a permeability factor at least equivalent to the test results for the west wall and to ensure that infiltration of liquid into the site through these newly constructed walls does not occur. In this event, Petitioner will submit narrative to staff describing the method used to construct the west wall and remaining portions of the clay perimeter wall with pictures and narrative to ensure consistent construction practices.
- "ii. If said test results are unsatisfactory, or a significant infiltration of liquid is identified in accordance with subparagraph 7c, the parties will attempt to negotiate an acceptable alternative for the construction of the remaining portions of the clay perimeter wall, or failing an agreement, submit the matter to the Hearing Officer for hearing and decision.

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"8. Condition No. 9 of the February 16, 1982, letter is deleted and replaced by the following:

- "a. Petitioner's landfill will not be excluded from consideration as, and will be considered, one of the several sanitary landfills in Indiana which are satisfactory repositories for special or "hazardous waste" as defined in 320 IAC 5-2-1(19) (1982 Cum. Supp.) (hereafter called "special waste"). The parties specifically agree that no "hazardous waste" as defined and identified 320 IAC 4-3 (1982 Cum. Supp.) (hereafter called "RCRA hazardous waste") shall be deposited at Petitioner's landfill after the effective date of this Order.
- "b. Petitioner shall be permitted to continue receiving the following "special wastes" from the effective date of this Order until further action of the Board or staff:
 - "i. U.S. Reduction Dust;
 - "ii. Asbestos fill from Borg-Warner and Amoco Oil (which waste streams were subject to Special Permission letters dated May 17, 1977, and May 14, 1980, respectively);
 - "iii. Corn starch and carbon filters from American Maize Products Company (which waste streams were subject to a Special Permission letter dated February 20, 1976);
 - "iv. The following steel mill sludges from J & L Steel Corporation: the central treatment plant sludge, the terminal treatment plant sludge, and the sludge from the 6 Stand Oil Recovery Unit.
- "c. After the effective date of this Order, staff will send a letter to the generators of the special wastes listed in subparagraph b above, information regarding the nature of the waste streams identified in subparagraph 8b above, to staff within sixty (60) days of receipt of such letter; it is expressly agreed that this sixty (60) day period will be extended by staff for good cause shown. Staff will analyze such updated information, make a final determination whether these listed special wastes may continue to be disposed of at the site, and shall promptly notify the generator of the waste and Petitioner of its decision. Any such decision shall constitute a "final action" for which Petitioner may file a Petition for hearing before the Board

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pursuant to IC 4-22-1 (1982) and IC 13-7-11-3 (1982). Any special permission letters issued for these listed wastes shall last one year. Renewal of such letters will be granted if the materials do not change significantly in quality or quantity, and if Petitioner's operation of the site is in compliance with this Agreed Order, and Petitioner's modified construction permit and operating permit.

- "d. It is the party's intention that other "special wastes" of similar quality, quantity, and composition as, and other "special wastes" presenting similar environmental hazards as, the above-listed special wastes will be considered for disposal at the site. The decision whether to allow "special wastes" in addition to those listed above to be deposited at Petitioner's site, must be made by staff on a case-by-case basis after considering the physical and chemical composition of the proposed waste as well as current operations at the site. Although it is impossible to make any guarantees in advance, staff agrees in principle that, given satisfactory operations and construction at the site in compliance with this Order, Operating Permit No. 45-2, and the modified construction plans approved February 16, 1982, waste streams with similar chemical and physical composition, and waste streams presenting similar environmental hazards as the special wastes listed in subparagraph "b" above, will be considered suitable for disposal at the site.
- "e. The parties agree that materials such as debris, wood, construction refuse, steel, etc., "coal ash," including fly ash and bottom ash (i.e., the resultant "ash" from coal burning), may be disposed of at the site without any special permission letters.
- "f. Petitioner agrees to submit a quarterly report to staff setting forth the types and amounts of "special wastes" disposed of at the site. These reports will be due the same day for the same period as the monitoring well reports referred to in paragraph 6 above.
- "g. Finally, the parties agree to cooperate in good faith in exploring the possibility of depositing the Georgia Pacific paper sludges and municipal treatment plant sludges at the site.

- "9. The parties agree that Petitioner's Operating Permit and amended Construction Permit shall last for a period of two years from the effective date of this Agreed Order. The renewal of this Operating Permit and amended Construction Permit, or the decision of whether to grant or renew special permission letters referred to in paragraph 8b, 8c, and 8d above, shall be based upon Petitioner's compliance with this Agreed Order, Petitioner's modified construction permit and operating permit and IC 13-7. For the purpose of renewals of existing special permission letters (subparagraph 8c), granting and renewal of additional special permission letters (subparagraph 8d), and the renewal of Petitioner's Operating Permit and amended Construction Permit (paragraph 9), the phrase "compliance with this Agreed Order, Petitioner's modified construction permit and operating permit" shall include but not be limited to (1) any de minimus or insignificant variations from the Agreed Order and/or Petitioner's modified construction permit and operating permit, and/or (2) any inspection report which contains demerits, but which still shows an "acceptable" rating, and/or (3) any unacceptable rating on 40 percent or less of the inspection reports conducted by the State in any twelve (12) month period."
13. Between the period of March 1, 1983, and January 3, 1984, Respondent inspected Petitioner's landfill four times. Inspections conducted subsequent to January 3, 1984, are irrelevant to the issue of whether the January 3, 1984, revocations were proper. Inspections conducted prior to March 1, 1983, are also irrelevant in that such inspections were conducted prior to the effective date of the Agreed Order.
14. Respondent's employer, Mr. Stuart Miller, inspected Petitioner's site on April 6, 1983. Mr. Miller noted that refuse was placed in standing water at that time. The site was found to be unacceptable.
15. The standing water was not a de minimus amount or a small puddle.
16. Mr. Miller again inspected Petitioner's site on July 11, 1983. The site was found to be acceptable.
17. Mr. Miller again inspected Petitioner's site on August 25, 1983. Mr. Miller found that areas around the then current working area did not have adequate cover, and that foundry sand was being used as cover. The site was found to be unacceptable.

18. Foundry sand is a solid waste, and is also a sandy, granular material under the Unified Soil Classification SW or SP. Because a solid waste must be covered itself, foundry sand may not be used as cover.
19. Mr. Miller again inspected Petitioner's site on October 13, 1983. Mr. Miller found that previously worked areas did not have adequate cover and that the Petitioner had used foundry sand as cover. The site was found to be unacceptable.
20. As of January 3, 1984, the Petitioner had not taken soil borings from the site's west wall, as required by paragraph seven (7) of the Agreed Order. ←
21. On July 5, 1983, there was heavy rainfall in the area of Petitioner's site, and the site flooded. The flooded water, with the exception of an area adjoining the site's west wall, was removed prior to August of 1983.
22. The standing water adjacent to the site's west wall is apparently a permanent condition, which to some extent has prevented the taking of soil borings from the west wall.
23. The leachate collection system had not been installed, and no notification of its installation was made as required by paragraph two of the Agreed Order. ←
24. A drainage swale on the west portion of Petitioner's site, required by the construction plans, was never built. ←
25. A siltation ponding area with a coarse filter outlet, required by the construction plans, was never constructed.
26. There is insufficient evidence in the record to determine whether the special wastes generated by United States Steel, J & S Steel sludges or asbestos fill from Borg-Warner, and Amoco Oil Company had changed significantly in quality or quantity between February 18, 1983, and January 3, 1984.
27. In issuing the revocation letter for American Maize Products, Respondent determined that the cornstarch and carbon filters, which were the subject of the original special permission letter, were not "special waste" and that no special permission was required to dispose of that waste stream.

Conclusions of Law

1. The Petitioner was not in compliance with the Agreed Order of February 18, 1983. ✓
2. The Petitioner was not in compliance with its construction permit, as amended February 18, 1983. ✓
3. The Petitioner was not in compliance with its operating permit as amended February 18, 1983. ✓
4. Petitioner was not in compliance with operating standards on three (3) of four (4) inspections conducted between issuance of the Agreed Order on February 18, 1983, and issuance of the four (4) denial letters on January 3, 1984.


Recommended Order

1. That the issuance of the four denial letters on January 3, 1984, is affirmed.
2. That the Order of February 18, 1983, continues in effect and that the Petitioner may apply for permission to dispose of special waste pursuant to that Order subject to the following:
 - a. No special waste may be accepted at Petitioner's site until the Petitioner submits the soil boring contemplated by paragraph 7 of the Agreed Order of February 13, 1984.
 - b. No special waste may be accepted at Petitioner's site until the Petitioner submits as-built plans to the Respondent evidencing compliance with its amended construction permit.
 - c. In the event that Petitioner requests special permission for the disposal of special waste from one of the sources listed in paragraph 8(b) of the Agreed Order, the Petitioner shall submit with such request such evidence as it may possess as to the quality and quantity of such waste disposed of at Petitioner's site from February 18, 1983, until the present, and an analysis of the quality and quantity of such waste as is proposed for disposal.
 - d. Until such time as the Respondent develops promulgated standards for the disposal of "special" waste, the burden of proof as to the issue of whether "special" waste from sources listed in paragraph 8(b) of the Agreed Order has changed in quality or quantity, shall be on the Respondent.

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3. The Hearing Officer retains continuing jurisdiction over the matter.

Dated this 1 day of April, 1985


James M. Garrettson
Hearing Officer